

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

ANDREA WOOD,

Plaintiff,

v.

RODNEY HO, *et al.*,

Defendants.

Case No. 3:24-CV-00512-ART-CLB

**REPORT AND RECOMMENDATION OF
U.S. MAGISTRATE JUDGE¹**

On November 12, 2024, Plaintiff Andrea Wood (“Plaintiff”) filed a civil rights complaint with the Court. (ECF No. 1-1.) However, Plaintiff did not submit an application to proceed *in forma pauperis* (“IFP”). Thus, the Court ordered Plaintiff to either submit an IFP application or pay the full filing fee by Friday, December 13, 2024. (ECF No. 3.) The Court cautioned Plaintiff that her failure to timely comply with the order would subject her case to a dismissal without prejudice. (*Id.*) On December 2, 2024, Plaintiff filed a motion for additional time, (ECF No. 4), which the Court denied and again directed Plaintiff to either pay the filing fee or file a completed IFP application by December 13, 2024. (ECF No. 5.) On December 12, 2024, Plaintiff again requested additional time, but did not comply with the Court’s order to either pay the filing fee or file her IFP application. (ECF No. 8.) On December 17, 2024, the Court again ordered Plaintiff to either pay the filing fee or file her IFP application, this time by December 20, 2024. (ECF No. 10.) The Court again cautioned Plaintiff that failure to timely comply with the order would result in a recommendation to dismiss the complaint without prejudice. (*Id.*) To date, Plaintiff has not complied with the Court’s order.

District courts have the inherent power to control their dockets and “[i]n the exercise of that power, they may impose sanctions including, where appropriate . . .

¹ This Report and Recommendation is made to the Honorable Anne R. Traum, United States District Judge. The action was referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and LR IB 1-4.

1 dismissal” of a case. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831
2 (9th Cir. 1986). A court may dismiss an action, with prejudice, based on a party’s failure
3 to prosecute an action, failure to obey a court order, or failure to comply with local rules.
4 See *Ghazali v. Moran*, 46 F.3d 52, 53-54 (9th Cir. 1995) (dismissal for noncompliance
5 with local rule); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (dismissal for
6 failure to comply with an order requiring amendment of complaint); *Carey v. King*, 856
7 F.2d 1439, 1440-41 (9th Cir. 1988) (dismissal for failure to comply with local rule requiring
8 *pro se* plaintiffs to keep court apprised of address); *Malone v. U.S. Postal Service*, 833
9 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply with court order).

10 In determining whether to dismiss an action for lack of prosecution, failure to obey
11 a court order, or failure to comply with local rules, the Court must consider several factors:
12 (1) the public’s interest in expeditious resolution of litigation; (2) the court’s need to
13 manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring
14 disposition of cases on their merits; and (5) the availability of less drastic alternatives.
15 *Thompson*, 782 F.2d at 831; *Henderson*, 779 F.2d at 1423-24; *Malone*, 833 F.2d at 130;
16 *Ferdik*, 963 F.2d at 1260-61; *Ghazali*, 46 F.3d at 53.

17 In the instant case, the Court finds that the first two factors, the public’s interest in
18 expeditiously resolving this litigation and the Court’s interest in managing the docket,
19 weigh in favor of dismissal. The third factor, risk of prejudice to defendants, also weighs
20 in favor of dismissal, since a presumption of injury arises from the occurrence of
21 unreasonable delay in filing a pleading ordered by the court or prosecuting an action. See
22 *Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor—public policy
23 favoring disposition of cases on their merits—is greatly outweighed by the factors in favor
24 of dismissal discussed herein. Finally, a Court’s warning to a party that her failure to obey
25 the Court’s order will result in dismissal satisfies the “consideration of alternatives”
26 requirement. *Ferdik*, 963 F.2d at 1262; *Malone*, 833 F.2d at 132-33; *Henderson*, 779 F.2d
27 at 1424. In the orders directing Plaintiff to file a complete IFP application or pay the full
28 filing fee, the orders expressly stated that if Plaintiff failed to timely comply, the case would

1 be subject to dismissal without prejudice. (ECF Nos. 3, 5, 10.) Thus, Plaintiff had
2 adequate warning that dismissal would result from her noncompliance with the Court's
3 order.

4 Accordingly, it is recommended that this action be dismissed without prejudice
5 based on Plaintiff's failure to pay the filing fee or file a fully complete IFP application in
6 compliance with this Court's orders.

7 The parties are advised:

8 1. Pursuant to 28 U.S.C. § 636(b)(1)(c) and Rule IB 3-2 of the Local Rules of
9 Practice, the parties may file specific written objections to this Report and
10 Recommendation within fourteen days of receipt. These objections should be entitled
11 "Objections to Magistrate Judge's Report and Recommendation" and should be
12 accompanied by points and authorities for consideration by the District Court.

13 2. This Report and Recommendation is not an appealable order and any
14 notice of appeal pursuant to Fed. R. App. P. 4(a)(1) should not be filed until entry of the
15 District Court's judgment.

16 **I. RECOMMENDATION**

17 For the reasons stated above, **IT IS RECOMMENDED** that this action be
18 **DISMISSED** without prejudice; and,

19 **IT IS FURTHER RECOMMENDED** that the Clerk of Court **ENTER JUDGMENT**
20 accordingly.

21 **DATED:** December 23, 2024

22 
23 **UNITED STATES MAGISTRATE JUDGE**